

JOHN DOE,)	
)	
Plaintiff,)	
v.)	EX PARTE MOTION TO
)	WITHDRAW AS COUNSEL
DUKE UNIVERSITY)	FOR PLAINTIFF WITHOUT
)	SUBSTITUTION
Defendant.)	

P. Sunny Panyanouvong-Rubeck, Artur Davis, and the law firm of HKM Employment Attorneys LLP (collectively, “Movants”), hereby submit the following brief in support of their Motion to Withdraw [Dkt. No. 24]. Movants respectfully move the Court for an Order granting motion to withdraw as counsels of record for Plaintiff without substitution of counsel.

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4. Since the mediation, numerous and growing irreconcilable differences have emerged over the litigation of this matter, including various communications from Plaintiff that Movants are prepared to share in an ex parte manner with the court that will shed light on why the continued representation of Plaintiff is untenable.

5. Movants have advised Plaintiff that due to the breakdown of the attorney-client relationship, consistent with the terms of the representation agreement between HKM and Plaintiff, Movants would file a motion to withdraw absent reconciliation of those differences on September 16, 2024.

6. On or about September 10, 2024, Plaintiff informed Movants he would likely oppose withdrawal, a position that he reiterated on September 15, 2024.

7. Movants are prepared to present en camera evidence that there is good cause to allow their withdrawal as counsels of record for Plaintiff, and to be relieved of any further duties and responsibilities for representing Plaintiff in this action, pursuant to LR 83.1(e) and Rule 1.16(b)(1) of the North Carolina Rules of Professional Conduct.

8. Plaintiff will be served electronically through email with a copy of this Motion and by regular mail at his preferred address as set forth in the Certificate of Service.

9. Movants have consulted with opposing counsel, Dixie Wells and Derrick Foard, who have indicated that Defendant takes no position regarding Movants' withdrawal.

10. Pursuant to the Order on the Joint 26(f) Report [Dkt. No. 13], the deadline to complete discovery is December 21, 2024, over 90 days from the date of this motion.

11. Under this Court's Local Rules, "[n]o attorney has been entered an appearance in any civil or criminal action shall be permitted to withdraw an appearance....except an order of the Court..." M.D.N.C. LR 83.1(e)(1). The North Carolina Rules of Professional Conduct, further provide that "a lawyer Shall withdraw from the representation of a client if... withdrawal can be accomplished without material adverse effect on the interests of client." N.C. Rules of Professional Conduct Ru. 1.16(b)(1) (emphasis added).

12. The decision to grant or deny a motion to withdraw falls within the Court's discretion. *See Patterson v. Gemini Org. Ltd.*, 238 F.3d 414 (table), No. 99-1537, 2000 WL 1718542, at *2 (4th Cir. 2000) (citing *Whiting v. Lacara*, 187 F.3d 317, 320 (2d Cir. 1999)). "In addressing motions to withdraw as counsel, district courts have typically considered whether the prosecution of the suit is likely to be disrupted," which in turn depends on the stage of the proceedings. *Whiting*, 187 F. 3d at 320 (internal quotation marks and brackets omitted). Withdrawal of counsel becomes more problematic nearer to the trial date. *See id.* At 321.

13. Given the breakdown of the attorney-client relationship, and the fact that no trial date has been set, withdrawal is the only tenable course in this case to ensure that there is no appearance or reality of a conflict of interest between Movant and Plaintiff. However, to preserve Plaintiff's option to pursue new counsel or prepare for pro se representation, Movants urge the prompt resolution of this matter, including if necessary, an en camera hearing regarding the Motion.

CONCLUSION

WHEREFORE, for the reasons set forth above, Movants respectfully ask for an in camera hearing regarding the Motion and that the Court enter an Order permitting Movants' withdrawal from further representation as counsel for Plaintiff in the present action.

This the 16th day of September, 2024.

HKM Employment Attorneys LLP

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Ex Parte Motion to Withdraw was served on all parties to this action by electronically filing the same with the Clerk of Court using the CM/ECF system, which caused notification of such filing to be emailed to the following parties of record this the 16th day of September, 2024.

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Attorneys for Defendant

I further certify that, I delivered a copy of such Motion to Plaintiff, by depositing in the United States Mail a copy of same in a properly addressed envelope, postage prepaid, addressed to Plaintiff at P.O. Box 3301, Durham, NC 27702, this the 17th day of September, 2024.

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